

The petitioner has challenged the order dated 21st December, 1996 passed by the Collector (Land Records), Barmer whereby the penalty of stoppage of one grade increment with cumulative effect

was imposed on him. He has also challenged the order dated 10th February, 1996 whereby his appeal filed against the aforesaid order of penalty was dismissed.

The petitioner was served with a charge-sheet dated 03rd October, 1995 on four allegations under Rule 16 of the Rajasthan Civil Service (Classification, Control and Appeal) Rules, 1958 (in short 'CCA Rules'). The petitioner in his reply to the charge-sheet denied the charges. An inquiry was thereafter conducted and the inquiry officer has submitted his report on 28th June, 1996. While the inquiry officer exonerated the petitioner in so far as charges No.1,3 and 4 are concerned, he however found charge No.2 partially proved against the petitioner. Charge No.2 is to the effect that petitioner while he was posted as Patwari Vithooja in the year 1991-92 made a wrong mutation of Khasra No.94/30 measuring 20 bighas in violation of Section 22(B) of the Rajasthan Tenancy Act, 1955. The inquiry officer on the basis of evidence in the case found that mutation No.1207 dated 19th August, 1991 was opened in the name of Gokla S/o Javara Bheel resident of Asotra. Various witnesses produced on behalf of the department included one Lekh Raj who was Patwari of Village Asotra. He stated that there was no person of the name of Goklka S/o Javara by caste Bheel. Similarly PW-4 also

stated that no person by this name was residing in village Asotra, although there was one person Gokla S/o Javara Choudhary Kalbi. This Gokla S/o Javara Choudhary was also examined as PW-5 in inquiry but he denied having owned any agricultural land in village Vithooja. PW-3 Mangilal has proved that the mutation in question was opened by none other than the petitioner. It was on the basis of appreciation of the entire evidence that the charge No.2 was partially found proved against the petitioner. The inquiry officer recorded the finding that it was a case of benami transaction in favour of a non-existent person, whereas the petitioner was required to satisfy himself about the correctness of the details after giving notice to the parties. He also concluded that the petitioner alone cannot held responsible for this illegal transaction and suggested that action should be taken by the Tehsildar Pachpadra as per the Rules.

I have heard Mr. Harish Purohit, learned counsel for the petitioner and Mr. Rameshwar Dave, Dy. Govt. Advocate and perused the record.

Learned counsel for the petitioner argued that as per Rule 132 of the Rules of 1957, a Patwari is required to make mutation on

ascertaining whether sale-deed has been registered or not and when the petitioner was satisfied that it was duly registered sale-deed, he had no option except to open the mutation. In doing so, the petitioner made necessary investigation and also made a note in the mutation register which was duly approved by the Tehsildar. He argued that mutation is merely a fiscal proceeding which does not decide any rights of the parties. Whether or not the transaction was benami or fake was required to be ascertained when the sale-deed was registered. It was argued that the petitioner before making mutation verified possession over the land on the basis of registered sale-deed and after verification of the possession made a note in the mutation register. He being posted at village Vithooja, could not know for certain as who was Gokla S/o Javara Bheel a resident of village Asotra and therefore even if the sale deed was registered in favour of a wrong person, there was no way he could verify the correct identity. Neither the disciplinary authority nor the appellate authority has applied their mind to the evidence on record and have mechanically recorded the finding of guilt against the petitioner. He therefore prayed that the writ petition be allowed.

On the other hand, learned Dy. Government Advocate argued that the petitioner has been let off with only a very mild penalty of

stoppage of one grade increment with cumulative effect. Inquiry has been conducted strictly in accordance with the CCA Rules. Making inquiry as to the genuineness of the transaction of sale and at least ascertain about the existence of person was very much his responsibility. No person by the name of Gokla S/o Javara Bheel were existed on earth and it was a fake deal which has been sanctified by the petitioner in opening mutation in favour of such a non existing person. It was argued that the order of penalty has been upheld even by the appellate authority. Both the orders do not suffer from any illegality or infirmity. Writ petition is therefore liable to be dismissed.

Having considered the arguments advanced by both the learned counsel, I am satisfied that this was a case where sale-deed was got registered in favour of non-existent person which fact has been proved by overwhelming evidence in the disciplinary inquiry. On the basis of such sale-deed, the mutation was also entered. The petitioner claims to have verified about possession of such non-existent person and on the basis of his satisfaction about such possession, he opened the mutation in favour of such non-existent person. The sole object with which such mutation was got entered in favour of the non-existent person was to sanctify an otherwise

illegal deal which was aimed at circumventing the bar contained in Section 42(B) of the Rajasthan Tenancy Act for transfer of the land of a scheduled tribe in favour of a person belonging to general community. The petitioner has been provided full opportunity during the course of inquiry and none of the provisions of the CCA Rules have been violated while conducting the inquiry. There was overwhelming evidence on record to prove the charge against the petitioner which has ultimately culminated in the imposition of penalty of stoppage of one grade increment with cumulative effect. No interference in the matter like this is called for by this Court in exercise of its writ jurisdiction.

The writ petition being devoid of merit is dismissed. There shall be no order as to costs.

[MOHAMMAD RAFIQ],J.

A.K.Chahar/-